IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.25 OF 2006
WITH
CIVIL APPLICATION NO.965 OF 2005

Mr.Pramod S.Tripathi. ..Appellant.

V/s.

Mr.Jaideo R. Tripathi & Anr. ..Respondents.

Smt.Neeta Madhyan i/b. Ms.Vandana Mahadik i/b M/s. S.M.Associates for appellant.

Mr.Vinay J. Hegde for Respondent No.1.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 10, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant materials on record.

2. I find no reason to depart from the conclusion reached by the court below. There is no substance in this appeal as the impugned order is well reasoned decision of the court below.

3. To get over this position, counsel for the appellant would contend that the lower court has not properly considered the provisions in the Lease Deed. Nowhere in the Lease deed even on liberal consideration of the clauses, it is possible to take

the view that the respondents are entitled to proceed with the construction of any new structure without the prior permission of the appellant who happens to be the owner of the plot. Counsel for the appellant relied on clauses 8,9 and 10 in particular to buttress this submission. Indeed, the appellant may be right in complaining that the court below has not adverted to clause (10) of the Lease deed. However, the substance of the finding recorded by the trial court with which I am in agreement is that the Lease Deed enables the appellant to carry out construction of additional structure. Much emphasis was placed on clause (10) of the Lease Deed. The same reads thus:

> "Not to assign (except by way of mortgage) or a transfer or under let or sub let (except as monthly tenants) or in any way part with the possession of the demiser premises or any part thereof without the consent in writing of the Lessor previously obtained without consent in writing of the Lessor previously obtained which consent however shall not be unreasonably withheld by the Lessor in the case of any respectable or responsible persons corporations or associations."

This submission however, overlooks the requirement of considering relevant clauses of Lease Deed together. If clause 8 of the Lease Deed is to be construed in the manner contended by the respondents, then the abovesaid submission canvassed by the Appellant will have to be rejected. The trial court has accepted

the stand taken by the respondents that in terms of clause (8), the appellant was at liberty from time to time to make additions or alterations to the said building or buildings or other structures now standing or to be hereafter constructed upon demised premises. The only obligation that was to be observed by the appellant was that the such additions or alteration do not in any way affect or deteriorate the value of the building or buildings or structures agreed to be maintained by the Lessee on the demised premises. The counsel for the appellant also relied on clause (9) of the Lease Deed which provides that the respondents not to dig up the soil and cut any trees and remove any earth clay stone or murum therefore except as may be required for the purposes of construction work hereby allowed. Emphasis was placed on the expression "allowed" occurring in this clause to contend that this clearly means that the respondents would be obliged to take prior permission of the appellant before starting any construction activities on the site. This submission is illadvised. That expression "allowed" would mean the entitlement of respondents to make additions or alterations to the building or buildings or other structure already standing on the date of Lease Deed or to be constructed thereafter as mentioned in the

earlier part of the Lease and not prior permission of the appellant. If the intent of the parties was to provide for prior permission to be obtained by the Respondent, such express provision would have occurred in clause (10). Whereas clause 10 merely provides that the respondent not to assign (except by way of mortgage) or transfer or under let or sub let (Except as monthly tenants) or in any way part with the possession of the demised premises or any part thereof without the consent in writing of the Lessor previously obtained part thereof without consent in writing of the Lessor previously obtained which consent however shall not be unreasonably withheld by the Lessor in the case of any respectable or responsible persons corporations or associations. No such prior permission is provided in respect of commencing activity of construction to be undertaken by the respondent Lessee in terms of clause (8) of the Lease Deed. Besides, what is relevant to notice is that the appellant had participated in the suit filed against his father by the defendant being Suit No.1992 of 2001. In that suit the respondent has prayed for decree against the father of the appellant that for permanent injunction not to interfere with the construction activities and structures to be erected on the demised premises. That suit has now

been decreed in favour of the respondents. At interlocutory stage, matter was brought right up to before this court and this aspect was duly considered. The appeal was brought before this court against interim order by the appellant as a Constituted Attorney of his father Mr.S. Tripathi who was defendant No.2 in the said suit. The present suit obviously appears to be proceeding to get over the decree passed by the lower court in the said suit filed by the respondent.

4. Taking overall view of the matter, in my opinion, no fault can be found with the order passed by the trial court which recorded that the defendant No.1 respondent herein erected proposed structure with prior permission of the Corporation after giving notice to the appellant/defendant No.1 in that behalf. This direction is on the basis of consideration of the relevant clauses of the Lease Deed between the parties. Hence this appeal should fail. The appeal as well as civil application is dismissed.

5. Needless to observe that any construction undertaken by the respondent on the demised premises will be subject to orders without prejudice to the

rights and contentions of the parties to be decided in the suit. The respondent shall not claim any equity in the event the suit is decreed in favour of the appellant.

6. Trial court may consider of expediting hearing of the suit, to be finally disposed of, preferably by end of 2007. All questions in the suit will have to be decided on its own merit in accordance with the law, uninfluenced by observations made in the impugned order or for that matter present order.